

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1484 of 1986

Date of decision: 3-2-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHARANI SAHEBSHRI BRIJ RAJKUNVERBA

Versus

STATE OF GUJARAT

Appearance:

MR BJ JADEJA for Petitioner
Mahesh Patel for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/02/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner, wife of late His Highness Shri
Mayur Dhvajsinhji Ghanshyamsinhji, prior Ruler of the

then Dhrangadhra State, has filed this petition challenging the order annexure A passed by the Deputy Collector, Dhrangadhra, in Revision Case No. 193/81-82 and the order annexure B passed by the Secretary(Appeals) in Revision Case No.SRD/RTS/224/82, 348-84.

2. The facts of the case in brief are that the land of Survey No.605 was given to the petitioner by her husband during his regime of the old Dhrangadhra State. This has been done under a grant called 'Raj-Lekh' dated 6-3-1947. After the State of Saurashtra was formed and after the merger of the old Dhrangadhra State in Saurashtra in 1948 A.D., survey was carried out, and at that time this land was given survey No.605. But through mistake it was entered in the name of Shri Anandkunverba Saheb, mother-in-law of the petitioner, and entry being No.1440 dated 14-2-1971 was made in the record of rights in that regard. When this mistake was brought to the notice of the petitioner, she made application dated 29th January, 1976 for making necessary correction in the entry, by entering the land in her name. This correction has been prayed for by the petitioner on the basis of the grant called 'Raj Lekh' dated 6-3-1947. It has also been mentioned by the petitioner that she has been in possession of the land for all these years. The application filed by the petitioner for correction of entry in her favour, after holding enquiry, as per entry No.1854 dated 9-2-1976, the land was entered in the name of the petitioner in the revenue record, which entry was duly certified by the competent authority on 4-10-1976.

3. In the year 1982, the Deputy Collector, Dhrangadhra, called for the record under sub rule (6) of Rule 108 of the Gujarat Land Revenue Rules, 1972, and issued notice to the petitioner calling upon her to show cause as to why the entry, which was made without executing a registered deed, should not be cancelled. Under order dated 2nd August, 1982 the entry was cancelled. The petitioner filed revision application against the said order before the Secretary (Appeals), Revenue Department, Ahmedabad. But the same was dismissed on 26th August, 1985. Hence this special civil application.

4. Learned counsel for the petitioner made three-fold contentions in this special civil application. It has been first contended that exercise of suo motu revisional power by the Deputy Collector, after more than 5-1/2 years of certified entry is wholly arbitrary and unjust and as such both the orders of the authorities

below deserve to be set aside. In support of this contention the counsel for the petitioner made reference to the decision of the Supreme Court in the case of State of Gujarat vs. Patel Raghav Natha, and other decisions of this court, reference to which has been made in ground (B) of the petition. It has next been contended that it is not the case of any entry in favour of the petitioner, but it was a case of correction of entry and as such the approach which has been made to point in issue by both the authorities is wholly perverse. Lastly it has been contended that the Deputy Collector has no jurisdiction to exercise suo motu powers in such cases.

5. I have gone through the judgment of the revisional authority, Secretary (Appeals), Revenue Department. The question which has not been considered in correct perspective is that the petitioner is claiming the land under the grant given in her favour on 6-3-1947. This grant has not been disputed by the counsel for the respondents. The said land was entered, admittedly, in the name of the mother-in-law of the petitioner vide entry No.1440 dated 14-2-1971. That was apparently a mistake made by the Department. The petitioner filed application for correction of the entry; and the correction was sought on the basis of the document of grant of land in favour of the petitioner. The Competent authority has corrected the entry. The Revisional Authority considered it to be a case of transfer of land and held that entry to be illegal, as the same has been made without any registered document. While giving this finding the Authority has failed to notice the fact that it is a correction of entry, and not a claim on the basis of transfer of right in the land. The matter would have been different if the petitioner was claiming an entry in the revenue record in respect of the land on the basis of transfer, said to be made by her mother-in-law in her favour, but that is not the case here. The reason given is that there is no specific mention of this agricultural land in the Raj Lekh. Suffice it to say that it is a matter of evidence and the petitioner could have been given an opportunity of explaining the same. After going through the contents of the order of the revisional authority, it appears that the fact that there is no registered document from the mother-in-law in favour of the daughter-in-law has been taken to be a condition precedent for change of entry. The revisional authority has not drawn distinction between the case where prayer has been made for correction of entries and the case where prayer is made for entry in the revenue record on the basis of transfer of right in the land. The discrepancy which has been pointed out in the document of

1947 could have been gone into only after the petitioner has been given sufficient opportunity to explain the same. Taking into consideration totality of the facts of the case I consider it to be in the interest of justice that the matter be sent back to the authority, i.e. Deputy Collector, Dhrangadhra, to decide the matter afresh in accordance with law and in the light of the observations made by this Court.

6. In the result this special civil application succeeds. The order dated 2-8-1982 passed by the Deputy Collector, Dhrangadhra, produced at annexure-A, and the order dated 26-8-1985 passed by the Secretary(Appeals), Revenue Department, produced at annexure-B are quashed and set aside. The matter is remanded back to the Deputy Collector, Dhrangadhra, with direction to decide the matter afresh in accordance with law. It shall be open to the petitioner to produce necessary evidence to explain the discrepancy which has been pointed out by the revisional authority in the document 'Raj Lekh' dated 6-3-1947. It shall be open to the petitioner to raise all other objections of jurisdiction and delay in giving the notice. Rule made absolute accordingly. No order as to costs.

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